

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8481 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

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SHANKARBHAI MANSUKHBHAI

Versus

PRANT OFFICER

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Appearance:

MR PM BHATT for Petitioners  
MR SP DAVE GOVERNMENT PLEADER for Respondent No. 1  
SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 26/02/97

ORAL JUDGEMENT

1. The petitioners in the petition happen to be the bona fide purchaser of the land bearing Block No. 420 situated at village Dantali under the Gandhinagar taluka of the same District. The sale was effected under a registered sale deed dated February 2, 1978. The

Consolidation Officer under the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 had issued a certificate of transfer under Section 24(1) of the said Act. While framing the scheme under Section-15 of the said Act the concerned officer had ordered the allotment of Block No. 420 to the petitioners. Later on, there has been a notice for the first time on December 5, 1995 calling upon the petitioners to show cause as to why the said transaction should not be derecognised and that the necessary entry should not be deleted.

2. The order is thus against the petitioners. Anyhow, when the petition reaches for final hearing, learned Counsel Mr.Bhatt for the petitioners points out two prominent features. According to the learned Counsel there was an entry declaring the holding of the petitioners as a fragment. Later on under mutation entry No. 1838 the land has been recognised as not a fragment under the Act of 1947. This entry available at Annexure-E would go to show that the entry regarding the fragment was required to be deleted and substituted by this entry on the assertion and acceptance of a fact that the piece of land was under a perennial irrigation. It is unfortunate that this entry at Annexure-E had never came to the notice of the petitioners and respondents till the ultimate orders. Anyhow, when the above said is the position resulting from the revenue record, rule required to be made absolute by saying that all the orders adverse to the petitioners in this respect shall stand deleted in view of the above said entry at Annexure-E.

3. One more aspect which requires consideration is that the entry showing the sale transaction in favour of the petitioners came to be set aside on the basis of a notice which came to be issued after a period of 12 years. It is against the settled principles regarding the time frame during which this exercise would have been done. The present petition requires to be accepted on this count also.

4. Thus, the present petition is allowed as indicated above. The rule is made absolute to the above said extent with no order as to costs.

5. Before parting, it shall have to be clarified that on February 24, 1997, the matter was ordered to be adjourned to 6th March, 1997 for final hearing. But, before the above said order could be signed, there was a request from learned counsel for the petitioners Mr.

Bhatt made in the presence of the learned Government counsel that this matter requires disposal in light of the view taken by this court in certain other similarly situated matters. It is therefore that the present petition is taken for final hearing today.

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